IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

1. S.B. CIVIL WRIT PETITION No.3589/2001
SMT. SANGITA JAIN V/s STATE OF RAJ. & Anr.

2. S.B. CIVIL WRIT PETITION No.5143/1998
ASHOK KUMAR THAYYA & Ors. V/s STATE OF RAJ. & Ors.

3. S.B. CIVIL WRIT PETITION No.4034/98
PERMANAND CHATURVEDI & Ors. V/s STATE OF RAJ. & Anr.

&

4. S.B. CIVIL WRIT PETITION No.4725/1998
RAJEEV KULSHRESHTHA & Anr. V/s THE STATE OF RAJ. & Anr.

DATE OF ORDER :: 13th MARCH 2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Advocates who appeared in these cases -

Shri Manish Bhandari for petitioners in WP Nos.3589/01 & 4034/98.
Shri Mahendra Singh for petitioners in WP No.5143/98 & respondents No.2 to 6 in WPNo.4034/98
Shri Sandeep Saxena for petitioners in WP No.4725/98

Shri S.P. Sharma for respondents No.7 to 9 in WP No.

4034/98

Shri S.N. Kumawat for RPSC.
Shri B.S. Chhaba, Deputy Government Advocate for the State.

REPORTABLE

All the aforesaid writ petitions although have been filed with different prayers and are founded on different legal grounds but since they pertain to the same process of selection for appointment on the posts of Assistant Agricultural Engineers initiated by the Rajasthan Public Service Commission (for short “the Commission”) vide advertisement dated 26.10.1996 as amended by corrigendum dated 21.12.1996 and yet another corrigendum dated 30.1.1997, these writ petitions were ordered to be connected with each other and therefore they were heard together and are now being disposed of by this common judgment.

The Commission issued an advertisement on 26.10.1996 inviting thereby applications from eligible

candidates for appointment on 20 posts of Assistant Agricultural Engineers in the Agricultural Department of the Government of Rajasthan. The Commission issued corrigendum on 21.12.1996 increasing the number of posts from 20 to 48. Even as the process of selection was still on, the State of Rajasthan vide notification dated 22.1.1997 brought about an omnibus amendment in all its Services Rules including in the Rajasthan Agriculture Service Rule 1960 (for short “the Rules of 1960”) with which we are concerned in these cases. Such amendment provided reservation to women candidates in service to the extent of 20% in direct recruitment. The Commission thereafter again issued corrigendum on 30.1.1997 to notify that such reservations shall be provided to the women candidates out of 48 posts as originally advertisement in the subject recruitment also.

I have heard Shri Manish Bhandari, learned counsel for petitioners in writ petition filed by Smt. Sangita Jain and

Pramanand Chaturvedi & others, Shri Mahendra Singh, learned counsel for petitioners in writ petition filed by Shri Ashok Kumar Thayya & others and Shri Sandeep Saxena, learned counsel for petitioner in writ petition filed by Shri Rajeev Kulshreshtha & others and Shri S.N. Kumawat learned counsel for Commission, Shri B.S. Chhaba, learned Deputy Government Advocate and Shri S.P. Sharma, learned counsel for the respondents in one of the petitions. Shri Mahendra Singh, learned counsel representing the petitioner in one of the petitions also opposed the writ petitions filed by Shri Parmanend and Rajeev Kulshreshtha.

Shri Manish Bhandari, learned counsel for the petitioner (in WP No.3589/2001) submits that grievance of Smt. Sangita Jain is that the Commission even after it has issued corrigendum on 30.1.1997 providing for the reservation of 20% to the females has not adhered to its stand inasmuch as it has wrongly applied the rule of reservation by treating the women candidates as general. It has prepared a

common select list for all the male and female candidates resultantly the petitioner was pushed down in the general category. As per law on the subject, the Commission ought to have prepared separate select lists for male and female category. According to him, when 20% posts out of 48 had been reserved for women, appointment against 10 posts was required to be made from amongst female candidates and when only 8 candidates in female category applied, the number of candidates being lesser than the total number of posts reserved for them, the Commission committed an illegality by subjecting them to a screening test. Under compulsion, therefore, the petitioner and other women candidates had to appear for screening test on 21.12.1997 in which the petitioner was illegality declared to have failed. Shri Manish Bhandari, learned counsel for the petitioner has relied upon a decision of a co-ordinate bench of this court in S.B. Civil Writ Petition No.2265/1998, Pragya Saxena v/s State of Rajasthan decided on 7.8.1998, copy of which has

been placed on record as Annexure 4. This judgment related to the same process of selection. In spite of the fact that Miss Pragya Saxena passed the screening test, she was not appointed because she appeared below in the combined merit list of general category. Shri Bhandari while referring to relevant part of the judgment argued that in that case it was held that no screening test was required to be held for female candidates and if the female candidates fulfill the eligibility criteria, the posts should have been filled up the straight-way. Even if the screening test was required to be held, separate lists should have been prepared for men and women. That having not been done, the petitioner was held entitled to appointment. He argued that the aforesaid judgment passed by the learned Single Judge, was upheld not only by the Division Bench in D.B. Civil Special Appeal (Writ) No. 105/1999, State of Raj. V/s Pragya Saxena & Anr. by dismissing the appeal vide judgment dated 3.4.2000, but Special Leave to Petition filed by State of Rajasthan

thereagainst was also dismissed. Shri Bhandari argued that although the petitioner Smt. Sangita Jain was a petitioner along with others in the aforesaid Writ Petition No.4034/98, but she later applied for deletion of her name from the array of petitioners. This court citing the reason of her having filed an independent petition by its order dated 1.3.2005 allowed the application thereby deleting her name from the array of the writ petitioners. He therefore argued that in spite of such objection raised by the respondents, the subsequent writ petition filed by Smt. Sangita Jain cannot be dismissed on that ground.

The writ petition filed by Smt. Sangita Jain has been opposed by, amongst others, Shri S.N. Kumawat, learned counsel for the Commission who argued that the process of selection was completed long back and the petition having been filed belatedly was liable to be dismissed. Names of all the selected candidates have already been forwarded to the Government and in fact appointment

against all 48 posts have been made. He argued that the Commission sought clarification from the Government in regard to notification dated 22.1.1997 providing reservation of 20% to women. The State Government vide its letter dated 13.11.1997 clarified that there shall be no reservation for women candidates in the present process of selection because the notification dated 22.1.1997 could not be given retrospective effect. Screening test was held on 21.12.1997 in which the petitioner also participated. The result of such test was declared on 24.1.1998 but the petitioner remained unsuccessful and therefore she was not called for interview. He argued that the petitioner along with Pramanand Chaturvedi & others has filed another Writ Petition (No.4034/1998) relating to the same recruitment process with the prayer that the Government and the Commission be required not to make appointment from the reserve list. He argued that in clause (5) of the said corrigendum, specific reference was made to the advertisement No.6/96-97

dated 26.10.1996 and to corrigendum No.3/96-97 dated 21.12.1996 earlier issued whereby the last date of submission of the application form was extended from 1.2.97 to 24.2.1997. Another petition with a different prayer at the instance of the same petitioner would therefore be not maintainable and is liable to be dismissed. Shri S.N. Kumawat further argued that the case of Pragya Saxena was entirely different because she not only participated in the screening test but was also declared successful. The petitioner appeared in the screening test without any protest and now at this stage, she cannot be permitted to challenge the same, particularly when she failed to qualify the same.

Referring to the corrigendum No.4/96-97 dated 28.1.1997 issued by the Commission, he argued that that corrigendum makes it clearly evident that the reservation of 20% would not be available to women in regard to the selection process in question and therefore according to

clause (5) of the said corrigendum, a separate list was not required to be prepared for women candidates because no reservation was provided to the women in the process of selection in question. He, therefore, argued that the writ petition be dismissed.

Shri B.S. Chhaba, learned Deputy Government Advocate also joined Shri S.N. Kumawat in opposing the writ petition by adopting his arguments and submitted that the writ petitions are liable to be dismissed.

Writ Petition No.4034/98, Parmanand Chaturvedi & Ors. v/s State of Rajasthan and Writ Petition No.4725/1998, Rajeev Kulshreshtha & Another v/s The State of Raj. & Another have been filed with a similar and almost common prayer. Shri Manish Bhandari and Shri Sandeep Saxena, learned counsel appearing for the petitioners in these petitions argued that the posts of Assistant Agricultural Engineers as per the scheme of part IV of the Rules of 1960 were required to be filled in only on the basis of interview

but since there were more number of candidates than available vacancies, the Commission adopted the procedure of examination in short listing of the candidates. Since they were not declared successful against the available number of vacancies, they could not appear for interview and eventually were not selected. The Commission ought to have called for the candidates in the ratio of 1:3 for the proposed selection. It was argued that Rule 22 of the Rules of 1960 provides for preparation of reserve list to the extent of 50% of the vacancies advertised and such reserve list containing 24 names was in fact prepared by Commission as per the information of the petitioners. The respondents are going to requisition the reserve list and fill in the vacancies which have arisen later on the basis of the reserve list and announcement to this effect has been made by the Agricultural Minister on the floor of the Legislative Assembly which has been published in the news-papers too. If the appointments are made from the reserve list in spite of the

fact that the entire main list has been exhausted, the petitioners would suffer great prejudice inasmuch as their right to consideration for appointment against the vacancies which have arisen later would be defeated. According to the learned counsel, even if a reserve list has been prepared, then such reserve list can be made use of only in the eventuality of selected candidates having not joined or having left after joining within the validity period of the reserve list. No vacancy which has become available after the advertisement during the process of selection can be allowed to be filled in on the basis of reserve list. It has been therefore prayed that the respondents be restrained from proceeding to fill up further vacancies on the posts of Assistant Agricultural Engineers on the basis of the reserve list.

A diametrically opposite prayer has been made by the petitioners Ashok Kumar Thayya and others in WP No.5143/98 seeking a direction to the respondents to

requisition and operate the reserve list for making further appointments on that basis. Shri Mahendra Singh, learned counsel appearing for the petitioners in that writ petition and respondents No. 2 to 6 in WP No.4034/98 argued that appointments are required to be made on the basis of reserve list to over come the difficulty of break down in the rule of quota and rota and in order to maintain the ratio from time to time between promotees and direct recruits in such appointments as prescribed by the Rules. It was argued that the cadre of Assistant Agricultural Engineers at the relevant point of time had strength of 265 posts. Till 1971 all such posts were required to be filled in 100% by promotion but only nine promotions were made uptil then. During the period from 1972 to 1984, the ratio prescribed under the Rajasthan Agricultural Service Rule 1960 for the post of Assistant Agriculture Engineer was 75% by direct recruitment and 25% by promotion. During this period 69 vacancies were determined from time to time. As per then

prescribed ratio only 24 vacancies could have been filled in by promotion but 45 persons came to be promoted. Thus 21 promotions were made in excess of the prescribed ratio. Shri Mahendra Singh, learned counsel while referring to the existing posts on 1.4.1996 argued that there were 92 promotees but only 54 direct recruits as on that date. Thus, there was a clear backlog of 38 vacancies so far as the direct recruitment quota is concerned. During this period, 52 new posts were created and 34 vacancies arose on account of promotions made from the post of Assistant Agriculture Engineer. But 38 vacancies were filled in by promotion during the year 1996-97 and 33 vacancies were filled in through promotion during the year 1997-98. Thus, there was a significant distortion and imbalance in the prescribed ratio. It was in this scenario that the Government sent a communication dated 23.7.98 to the Director, Agricultural Department inquiring about the available vacancies and on receipt of the information took a policy decision vide letter

dated 31.7.98 to fill up the existing vacancies by requisitioning the names from reserve list. While initially this court passed an interim order on 7.9.98 in Writ Petition No.4034/98 filed by Parmanand Chaturvedi & Others restraining the Government from making any appointment from reserved list. This order was later modified on 17.9.98 to say that the rights of the persons who were included in the reserve list will not be adversely affected on account of stay order. Learned counsel relied on the judgments of Hon'ble Supreme Court in State of J & K v/s Sanjeev Kumar (2005) 4 SCC 148, Secretary APPSC V/s B. Swapna (2005) 4 SCC 154 and this court in Dr. Mathuralal v/s State of Rajasthan 1995 (3) WLC 723. Shri Mahendra Singh further argued that the petitioners have got a legitimate right to claim appointment on the basis of their inclusion in the reserve list which cannot be defeated just because of lapse of time. He therefore prayed that the writ petitions filed by Pramenand Chaturvedi and Rajeev Kulshreshtha be

dismsised and that of Ashok Kumar Thayya & others be allowed.

Shri S.P. Sharma, learned counsel for respondents No. 7 to 9 in Writ Petition No.4034/98 also opposed the said writ petition and argued that there had been serious imbalance and distortion in applying the quota of direct recruitment vis-a-vis promotion inasmuch as the State Government having extended the assurance on the floor of the Legislative Assembly that it was proceeding to make appointment on the basis of reserve list, cannot be allowed to go back upon its stand. His clients, whose names find place in the reserve list, cannot be deprived of their legitimate right. He, therefore, also supported the arguments of Shri Mahendra Singh and submitted that the Government be commanded to operate the reserve list and make appointments of those included therein to restore and maintain the proportion of the direct recruitment and promotion prescribed in the Rules of 1960.

Shri B.S. Chhaba, learned Deputy Government Advocate for the State in these cases, argued that the Government did not make any appointment form the reserve list as there was no vacant post because all the selected candidates submitted their joining. The department had at no point of time gave any assurance for giving appointment from the reserve list. Shri B.S. Chhaba, also made a categorical reference to the reply submitted by the Government in Writ Petition No.4725/1998 filed by Rajeev Kulshreshtha, wherein it has been averred that all the selected candidates have joined their duties and no post is lying vacant. Since no post was lying vacant, there was no occasion to use the reserve list. He argued that the reserve list was required to be operated by the Government only if the selected candidates had not joined or left after joining. Neither of the situations being there, there was therefore no question of making appointment from reserve list. While referring to the reply to the Writ Petition No.5143/1998,

Shri B.S. Chhaba further argued that the cadre strength of 265 as alleged has been denied by the Government and he submitted that this strength has undergone changes from time to time due to abolition of posts and discontinuation of temporary schemes. While the vacancies are determined on year to year basis and promotions are made on regular basis as per rules, but the process of appointment by way of direct recruitment is lengthy procedure and therefore cannot be held year-wise. He thus denied that the appointments can be made on the basis of reserve list. He submitted that the process of selection having already been completed, all 48 appointees have joined their duties. It was therefore prayed that the writ petitions be dismissed.

I have given my thoughtful consideration to the rival arguments advance by learned counsel for the parties and perused the material on record.

Later three of the above writ petitions though founded on different grounds raise similar points of law and fact as

to whether the Government can be asked/permitted to make use of the reserve list for making appointment in excess of the number of vacancies advertised. However the first writ petition filed by Smt. Sangita Jain raise an entirely different issue. I would therefore proceed to take up and decide the first writ petition first.

Examining at the outset objections raised by the respondents that the petition filed by Sangita Jain is liable to be rejected because she had originally joined with other petitioners in Writ Petition No.4034/98, supra, and, therefore, cannot be permitted to file another writ petition, it must be noted that in the first place, the petitioner Sangita Jain applied for deletion of her name from the array of petitioners in Writ Petition No.4034/98 and her application to this effect was allowed and her name was accordingly deleted. Secondly, the Writ Petition No.4034/98 was filed with an altogether different prayer whereby the respondents were sought to be restrained from operating

the reserve list and her subsequent writ petition was based on entirely different grounds. The delay also cannot come in the way of her claim because she had been pursuing her claim for appointment right since 1998. Originally she joined Permanand Chaturvedi & others in filing writ petition on different grounds and later she filed subsequent writ petition on the basis of judgment of this court in Pragya Saxena. If only the respondents had correctly applied the law of reservation on the subject, the petitioner Sangita Jain would have certainly been appointed. But it was owing to fault on their part that she was deprived of appointment. The respondents cannot be therefore allowed to benefit from their own fault. Both the objections, in my view, are therefore liable to be over-ruled and are accordingly rejected.

Adverting now to the merits of the case, it is to be noted that the judgment of this court by the learned single Judge in Pragya Saxena is quite categorical on the point that

reservation to the extent of 20% would be required to be extended to female candidates even in the process of selection in question. Though originally when the process selection was initiated by advertisement dated 26.10.96, number of vacancies was 20 but by then the Government had not provided for the reservation for female to the extent of 20%. Later when the vacancies were increased from 20 to 48 by corrigendum dated 21.12.96, and the Government extended the benefit of 20% reservation to the female in all its services. The Commission by its subsequent corrigendum dated 30.1.1997, extended the benefit of reservation of 20% to the female candidates even out of the aforesaid vacancies. This issue has been settled for good by the learned single Judge in Pragya Saxena, supra, in which it has been held that the reservation was very much available to the females in the process of selection in question. It was held that when the first clarification sought by the Commission from the Government was replied in the

affirmative to the effect that the reservation for women candidates is to be made applicable to the extent of 20%, there was hardly any option for the Government to retract from its stand. The women were positively entitled to reservation as per notification dated 21.1.1997. It was also held that the Commission while undertaking the exercise of selection was required to prepare a separate list for women candidates and if only eight women candidates were available, no screening test was required to be held for them. If the women candidates fulfilled the eligibility criteria, the post should have been filled in straight away from such women candidates. This judgment passed by the learned single Judge was upheld not only by division bench but also by the Hon'ble Supreme Court. It should therefore be clear that notwithstanding the fact that Pragya Saxena had attempted and qualified the screening test, the principle of law that was decided in the aforesaid judgment would still apply to the facts of the present case.

It is trite law that reservations provided on caste basis such as SC, ST, OBC and general (unreserved) are considered vertical reservations whereas the reservation provided to females, physically handicapped and dependents of army personnel etc. are considered horizontal in nature. While the ratio of vertical reservation is applied on the total number of posts, horizontal reservation is to be worked out as per the given percentage in each of categories of vertical reservation. In other words, the horizontal reservation has to cut across the vertical reservation. This is so because the reservation made in favour of the female is related to clause (1) of Article 16 read with clause (3) of Article 15 of the Constitution of India and therefore such reservation falls in the category of horizontal reservation which would have to be carved out from each category of vertical reservation namely SC, ST, OBC and General (unreserved). The law on the subject came to be best stated by Constitutional Bench of the Hon'ble Supreme Court in Indra Sawhney and Others

v/s Union of India and Others 1992 Supp (3) SCC p.217 in para No. 812 of the report which is as follows :

> "We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16 (4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of

> reservations in favour of backward class of citizens remains – and should remain – the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

This being the position of law, the female candidates even for the purpose of providing horizontal reservation within available number of posts of General category (unreserved posts) have to be considered a separate class. In fact, the respondent-Commission itself in para 3 of the corrigendum No.4/96-97 dated 28.1.1997 (Annex-12) described reservation in favour of women as horizontal to be provided within respective vertical categories. The object of holding the screening test being to short list the candidates, if there were less number of female candidates than available number of posts for female in General category, there was no necessity to hold the screening test and appointment as already held in Pragya Saxena, should have been straight away offered to such female candidates. And even if more number of applications than available

number of vacancies would have been received, a separate screening test was required to be held for women, they being a special class (female-horizontal) within the broader category (general – vertical). In my considered view, the respondents have wrongly applied the law of reservation.

This now takes me the batch of other three writ petitions where the dispute is as to the entitlement of the Government to operate the reserve list. The petitioner Ashok Kumar Thayya and others in Writ Petition No.5143/1998 have sought to base their claim on necessity of operating reserve list on the ground of break down of quota rule. According to Shri Mahendra Singh, learned counsel for the petitioner in that case, when category-wise vacancies were determined every year, Rule 10(1)(c) of the Rules of 1960 casts a statutory obligation upon the Government to maintain the prescribed proportion and ratio in respect of the posts included in the service between the direct recruitee and the promottees. If there had been a break

down of quota and rota, the Government is obliged to restore the balance by ensuring that the prescribed proportion is restored at the time of next recruitment. According to him, the imbalance had crept in the ratio between the promottees and direct recruits inasmuch as there had always been more number of promottees in excess of their prescribed quota. This was explained by Shri Mahendra Singh with the help of datas noticed above. In this connection, Shri Mahendra Singh, the learned counsel relied upon the judgments of Hon'ble Supreme Court in State of J & K v/s Sanjeev Kumar (2005) 4 SCC 148, Secretary APPSC v/s B. Swapna (2005) 4 SCC 154 and this Court in Dr. Mathuralal v/s State of Rajasthan 1995(3) WLC 723.

So far as Sanjeev Kumar, supra, is concerned, that was a case in which the appointments made in excess of the notified vacancies were held to be invalid by the High Court but on facts of the case, the Hon'ble Supreme Court found

that in spite of the fact that only two vacancies were notified, there were more number of existing vacancies because four persons who had been promoted prior to the date of advertisement on officiating basis were receiving consideration of PSC and were ultimately approved by PSC which recommended their promotion. Hon'ble Supreme Court found that this aspect as also the effect of relevant rule relating to use of the reserve list was not considered by the High Court, therefore, the matter was remanded for consideration afresh. In so far as the judgment of B. Swapna, supra, is concerned, that was a case in which the wait list / ranking list having been prepared, was to remain operative for one year as per the rules. Under the Rules, the Commission had the option to summon candidates from the ranking list and at the same time, it also had the power to freeze ranking list for reasons to be recorded. In the facts of that case, when the Commission received a new requisition from the Government, instead of operating the wait list, it

decided to freeze the rank list and issue fresh advertisement. Action of the Commission was held justified and it was held that there cannot be any appointment beyond the number of advertised vacancies. Dr. Mathuralal's case, supra, also turned out on its own facts where it was held that if the requisition for calling the names of reserve list is received from the Government by the Commission within the time limit prescribed under the Rules, the Commission has no power to with-hold the reserve list. Applying the ratio of the aforesaid judgments to the facts of the present case, I find that none of the judgments can help the petitioner.

In order to appreciate content and true import of the relevant rule, it would be profitable to extract in extenso rule 22 of the Rules of 1960 which is as under :

> "22. **Recommendations of the Commission :-** The Commission shall thereafter prepare a list of the candidates whom they consider suitable for appointment to the post or posts concerned, arranged in order of

> preference and forward the same to Government :
>
> @””Provided that the Commission, may to the extent of 50% of the advertised vacancies keep names of suitable candidates on the reserve list. The names of such candidates may, on requisition, be recommended in the order of merit to the Government within six months from the date on which the original list is forwarded by the Commission to the Government.”

Aforesaid proviso to Rule 20 of the Rules of 1960 lays down that the Commission while selecting candidates for vacancies advertised, shall to the extent of 50% of the vacancies keep the names of suitable candidates on the reserve list and the names of such candidate may, on requisition, be recommended in order of merit to the Government within six months from the date on which the original list is forwarded by the Commission to the Government. It is, therefore, clear that in spite of preparation of the waiting list by the Commission, the names contained therein are required to be forwarded by the

Commission to the Government within six months from the date on which the original list is forwarded only if a requisition to this effect is received by it from the Government. Although what has been argued with reference to the figures and datas showing the break down and distortion in the quota rule may be factually correct but that alone cannot provide a basis to the petitioner to claim writ of mandamus. It is trite law that when a particular thing is required to be done in a particular manner, that has to be done in that manner alone or not at all. If the rule requires that the decision to requisition the names from the reserve list has to be taken by the Government and if the Government has taken a conscious decision not to requisition such names, question that I am called upon to determine in these cases is whether this court by issuing a writ of mandamus can require the Government to requisition the names from the reserve list and make appointment on that basis.

In spite of the fact that the petitioner Ashok Kumar Thayya and others have been able to show from the record that there had been break down of quota and rota rule and certain correspondence had taken place between various functionaries of the Government and the issue was raised even on the floor of the Rajasthan Legislative Assembly where some assurance was given by the concerned Minister, for filling up the vacant posts by requisitioning the names from the reserve list, it is crystal clear that things did not move any further and the facts remain that no requisition was ever sent by the Government to the Commission calling for the names from the reserve list for the purpose of making appointment. In fact, the Government has taken a categorical stand in reply to all these three writ petitions that those included in the reserve list, are not entitled to get appointment and further that the reserve list was required to be operated by the Government only if either the selected candidates had not

joined or left after joining and further that all the posts having been filled up, the Government had no intention to make use of the reserve list. In view of such a categorical stand taken by the Government, this court in exercise of its power of judicial review can not command the Government to now operate the reserve list and make appointment therefrom, particularly when the stand taken by the Government is consistent with the law propounded by the Hon'ble Supreme Court in B. Swapna and Sanjeev Kumar's cases, supra, that the appointments cannot be made in excess of the number of vacancies advertised. In fact, this law has again been recently reiterated by their Lordships of the Supreme Court in State of U.P. & Others v/s Raj Kumar Sharma & others (2006) 3 SCC 330.

Then, there is another reason that impels me to take this view. And that is that when number of vacancies forms the basis to short list the candidates for calling them to interview three times number of vacancies, the zone of

consideration correspondingly got restricted on account of the number of vacancies originally notified. Making more number of appointments would not only adversely affect the rights of those who have acquired eligibility subsequent to the date of advertisement of vacancies but also, of those, who were left out from the zone of consideration only because formation of such zone was based on originally advertised number of vacancies. If additional number of vacancies which are later sought to be filled in, had also been added to call the candidates three times the number of total vacancies, that would have resulted in proportionate expansion of the zone of consideration thereby entitling more number of candidates to be called to interview. This would have certainly vindicated the right of the petitioners for consideration in keeping with the spirit of based on the right of equality in the matter of appointment guaranteed vide Article 16 of the Constitution of India. That having not been done, further appointments, over and above the

number of advertised vacancies, would be violative of Articles 14 and 16 of the Constitution of India.

For what has been discussed above, the writ petition filed by Ashok Kumar Thayya & others fails and is accordingly dismissed. In view of the elaborate discussion made and conclusions arrived at by me in Ashok Kumar Thayya & others (Writ Petition No.5143/1998), the writ petition filed by Permanand Chaturvedi & others (Writ Petition No.4034/98) and Rajeev Kulshreshtha & others (Writ Petition No.4725/98) are also liable to be dismissed as being misconceived and are accordingly dismissed.

However, deliberations on the question of law raised in the writ petition filed by Smt. Sangita Jain persuades me to allow her writ petition and therefore WP No.3589/2001 is allowed. The respondents are directed to consider her case for appointment on the post of Assistant Agricultural Engineer and if found suitable, appoint her with effect from the date on which the candidates immediately below her in

the merit list required to be prepared as per the law discussed above, was appointed. She shall however be entitled to only seniority and notional benefits of pay, increments etc. but shall not be entitled to the arrears of the salary for the intervening period. Compliance of this direction be made within two months from the date of receipt of copy of the judgment.

All the aforesaid writ petitions are decided accordingly with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/